

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In re:

ERIC P. MAY,

Case No. 13-35598-KRH

Debtor.

Chapter No. 13

BRANCH BANKING & TRUST COMPANY,

Plaintiff,

v.

ERIC P. MAY

and ROBERT E. HYMAN, Trustee,

Defendants.

**MOTION FOR RELIEF FROM STAY
AND NOTICE OF MOTION AND HEARING THEREOF**

The Motion of Branch Banking & Trust Company ("Plaintiff") respectfully represents:

1. On October 16 2013, an Order for Relief was entered in this case upon the filing of a Petition in this Court by the Debtor.
2. Robert E. Hyman was appointed Trustee of the property of Debtor and is qualified now and acting as Trustee. The filing of said petition acts as a stay against collection proceedings by Plaintiff against Defendants pursuant to 11 U.S.C. § 362.
3. At the time of the filing of the Petition in Bankruptcy herein, the Debtor owned the following real property located at 1556 Rock Castle Road, Goochland, Virginia ("Real Property"), which Real Property is more accurately described as follows:

All that certain lot, piece or parcel of land, lying and being in Lickinghole District, Goochland County, Virginia, designated as Lot 1, as more particularly shown on plat of survey entitled "Plat of Survey of Six Lots totaling 16 28 acres for Henry A Wootton Estate, Lickinghole District, Goochland County, Virginia", dated

Deborah S. Kirkpatrick, Esq.
VSF #32987
P.O. Box 10275
Va. Beach, VA 23450-0275
Ph: (757) 233-0281; Fax: (757) 233-0277
Counsel for Branch Banking & Trust Company

August 31, 1988, made by Michael L Parrish & Assoc , Professional Land Surveyors, a copy of which is recorded in Plat Cabinet A #359, and to which reference is hereby made for a more particular description herein conveyed

BEING a portion of the real estate conveyed to Eric P May by deed from Christopher Gilbert dated December 12, 2008 and recorded immediately prior hereto in the Clerk's Office, Circuit Court, County of Goochland, Virginia

4. Plaintiff is the holder of a Note dated December 23, 2008 in the original principal amount of \$343,220.00 ("Note").

5. The Note is secured by a lien on the Real Property pursuant to a Deed of Trust recorded in the Clerk's Office for the Circuit Court of Goochland County, Virginia ("Deed of Trust").

6. A copy of the Proof of Claim filed by Plaintiff is attached hereto along with a copy of the Note and Deed of Trust.

7. The Note had a payoff of \$409,889.68 as of January 2, 2014.

8. Pursuant to the terms of the Debtor's Chapter 13 Plan, the Debtor is to make post-petition payments coming due under the Note directly to Plaintiff.

9. The Debtor is in default for failure to make direct payment.

10. The Note is currently past due in direct payment to Plaintiff for the November 1, 2012 through January 1, 2014 post-petition payments, for a total delinquency of \$38,672.85, which figure is exclusive of attorney's fees and costs.

11. The Debtor has filed a proposed a Chapter 13 Plan which Plaintiff has objected to. The proposed Plan provides language where the Debtor acknowledges the amount of the arrears owed to Plaintiff, however, proposes to cure those arrears by modification of the mortgage on or before June 16, 2014.

12. Plaintiff has objected to the proposed Plan and submits that a modification is not feasible, however, Plaintiff did send the Debtor a loss mitigation package on November 7, 2013 and to date, Plaintiff has not received the completed application back from the Debtor.

13. The Debtor has had ample opportunity to submit the paperwork, however, has not done so and Plaintiff submits that it is entitled to relief from the Automatic Stay.

14. Plaintiff would further note that this account was previously in loss mitigation but removed. Plaintiff submits that this Debtor's previous attempt at loss mitigation was unsuccessful, therefore, it is unlikely that the Debtor would now succeed.

15. The Debtor is unable to afford adequate protection due Plaintiff, and neither he nor his estate has grounds to resist the entry of an Order terminating the stay aforesaid.

16. Cause exists to terminate the stay aforesaid.

17. Plaintiff is being injured by its inability to proceed against the Real Property securing the indebtedness due to the automatic stay provided for in 11 U.S.C. § 362.

WHEREFORE, Plaintiff moves that the automatic stay provided for by the provisions of Title 11 of the United States Code be modified in conformance therewith, that the provisions of Bankruptcy Rule 4001(a)(3) be waived, and that it be granted such other and further relief as this Court shall deem proper.

NOTICE

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the court to grant the relief sought in the motion, or if you want the court to consider your views on the motion, then on or before fourteen (14) days after service of this Motion, you or your attorney must file a written response explaining your position with the Court at the following address: 701 East Broad Street, Richmond, VA 23219 and serve a copy on the movant. Unless a written response is filed and served within this fourteen (14) day period, the Court may deem opposition waived, treat the motion as conceded, and issue an order granting the requested relief.

If you mail your response to the Court for filing, you must mail it early enough so the Court will receive it on or before the expiration of the fourteen (14) day period.

*Attend the preliminary hearing scheduled to be held on: January 29, 2014, at
9:30 a.m. in Courtroom #5000, United States Bankruptcy Court, U.S. Courthouse 701
East Broad Street, Richmond, VA 23219.*

DATED this 7th day of January, 2014.

BRANCH BANKING & TRUST COMPANY

By: /s/ Deborah S. Kirkpatrick
Of Counsel

Deborah S. Kirkpatrick, Esq.
Virginia State Bar No. 32987
Post Office Box 10275
Virginia Beach, VA 23450-0275
Ph: (757) 233-0281
Fax: (757) 233-0277
Email: dskirkpatrick@cox.net

PROOF OF SERVICE

I hereby certify that the 7th day of January, 2014, a true and correct copy of the foregoing Motion for Relief From Stay and Notice of Motion and Hearing was transmitted electronically through the Court's CM/ECF system to the Debtor's Attorney, Christopher M. Winslow, Esq. and to the Trustee, Robert E. Hyman and mailed via first class mail to the Debtor at Eric P. May, 1556 Rock Castle Rd., Goochland, VA 23063.

/s/ Deborah S. Kirkpatrick